

Part 11 Bonds

63G-6a-1101 Title.

This part is known as "Bonds."

Enacted by Chapter 347, 2012 General Session

63G-6a-1102 Bid security requirements -- Directed suretyship prohibited -- Penalty.

- (1) Bid security in an amount equal to at least 5% of the amount of the bid shall be required for all competitive bidding for construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or any other form satisfactory to the state.
- (2) When a bidder fails to comply with the requirement for bid security described in the invitation for bids, the bid shall be rejected unless, pursuant to rules of the applicable rulemaking authority, the issuing procurement unit determines that the failure to comply with the security requirements is nonsubstantial.
- (3) After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in Section 63G-6a-605. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.
- (4)
 - (a) When issuing an invitation for a bid under this chapter, the procurement officer or the head of an issuing procurement unit responsible for carrying out a construction project may not require a person or entity who is bidding for a contract to obtain a bond of the type described in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.
 - (b) A person who violates Subsection (4)(a) is guilty of an infraction.

Amended by Chapter 445, 2013 General Session

63G-6a-1103 Bonds or security necessary when contract is awarded -- Waiver -- Action -- Attorney fees.

- (1) When a construction contract is awarded under this chapter, the contractor to whom the contract is awarded shall deliver the following bonds or security to the procurement unit, which shall become binding on the parties upon the execution of the contract:
 - (a) a performance bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit; and
 - (b) a payment bond satisfactory to the procurement unit that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in the state or any other form satisfactory to the procurement unit, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.
- (2)
 - (a) When a construction contract is awarded under this chapter, the procurement officer or the head of the issuing procurement unit responsible for carrying out the construction project may not require a contractor to whom a contract is awarded to obtain a bond of the types referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or broker.

- (b) A person who violates Subsection (2)(a) is guilty of an infraction.
- (3) Rules of the applicable rulemaking authority may provide for waiver of the requirement of a bid, performance, or payment bond for circumstances in which the procurement officer considers any or all of the bonds to be unnecessary to protect the procurement unit.
- (4) A person shall have a right of action on a payment bond under this section for any unpaid amount due to the person if:
 - (a) the person has furnished labor, service, equipment, or material for the work provided for in the contract for which the payment bond is furnished under this section; and
 - (b) the person has not been paid in full within 90 days after the last day on which the person performed the labor or service or supplied the equipment or material for which the claim is made.
- (5) An action upon a payment bond may only be brought in a court of competent jurisdiction in a county where the construction contract was to be performed. The action is barred if not commenced within one year after the last day on which the claimant performed the labor or service or supplied the equipment or material on which the claim is based. The obligee named in the bond need not be joined as a party to the action.
- (6) In any suit upon a payment bond, the court shall award reasonable attorney fees to the prevailing party, which fees shall be taxed as costs in the action.

Amended by Chapter 196, 2014 General Session

63G-6a-1104 Preliminary notice requirement.

- (1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under this chapter shall provide preliminary notice to the designated agent as prescribed by Section 38-1b-202, except that this section does not apply:
 - (a) to an individual performing labor for wages; or
 - (b) if a notice of commencement is not filed as prescribed in Section 38-1b-201 for the project or improvement for which labor, service, equipment, or material is furnished.
- (2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under this chapter.
- (3) The preliminary notice required by Subsection (1) must be provided before commencement of any action on the payment bond.
- (4) Subsection (1)(a) does not exempt the following from complying with the requirements of this section:
 - (a) a temporary labor service company or organization;
 - (b) a professional employer company or organization; or
 - (c) any other entity that provides labor.

Amended by Chapter 278, 2012 General Session

Amended by Chapter 330, 2012 General Session

Renumbered and Amended by Chapter 347, 2012 General Session

63G-6a-1105 Form of bonds -- Effect of certified copy.

- (1) The form of the bonds required by this part shall be established by rule made by the applicable rulemaking authority.
- (2) Any person may obtain from the procurement unit a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any.

(3) A certified copy of a bond is prima facie evidence of the contents, execution, and delivery of the original.

Amended by Chapter 196, 2014 General Session